IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE SRI JUSTICE GOPALAKRISHNA TAMADA

Writ Petition No.32756 of 1998

Dated: 19-06-2007

Between:

Smt. P. Suryakumari, w/o late P. B. Venkata Reddy.

... Petitioner

and

1. The Jubilee Hills Co-operative House Building Society Ltd.,
   Jubilee Hills,
   Hyderabad,
   represented by its President and another.

... Respondents

ORDER:

This writ petition is filed seeking a *mandamus* to declare the action of respondents in not allotting alternative plot to petitioner in lieu of plot No.443/A/13/3 allotted to her but could not be delivered to her, as arbitrary and illegal and consequently direct respondents to allot alternative plot to her from the open space of Ac.1-35 cents situated to the North of Road No.65, Jubilee Hills in lieu of the plots allotted to her in Block No.III on 10-07-1991 by first respondent Society.

2. According to petitioner, her husband was one of the allottees of first respondent Society as early as in 1965 and his registration with the Society was M.S.No.700 and initially he was allotted Plot No.1331.

The allotment of the said plot was on payment of consideration of Rs.5,000/-. Thereafter, as he could not construct any building the said land was surrendered. Subsequently, in 1984 he became a member afresh with M.S.No.4078 and he was allotted Plot No.332. But, however, the said allotment was also subsequently cancelled. In lieu thereof,

in 1991, her husband was allotted an alternative plot bearing No.443-A13/3, but due to his misfortune, the said plot was occupied by the stonecutters and thereafter Government regularized their illegal occupation by granting pattas. In the light of the same, he asked for alternative plot and in that regard, he filed A.T.C.No.34 of 1997 before the Arbitral Tribunal and the said Tribunal after hearing him, as well as first respondent Society passed an order stating that it is a fit case, wherein her husband, who happens to be one of the allottees of the Society has to be accommodated with a suitable plot particularly in view of the fact that he paid an amount of Rs.5,000/- towards sale consideration as early as in 1965 and another amount of Rs.18,000/- in 1984, which is still lying with first respondent Society. It is stated that thereafter her husband died on 23-07-1998.

3. Now the grievance of petitioner is that first respondent Society had not given effect to the award passed by the Arbitral Tribunal, dated 11-04-1998 and hence she approached this Court and filed the present writ petition.

4. Despite the fact that first respondent Society was served with

notice and engaged a counsel by name Sri K. Ramesh Chowdary, has not chosen to file any counter affidavit controverting the said factual aspects. Further, when this matter is taken up, learned counsel for first respondent is also absent. In the light of the above, this Court heard learned counsel for petitioner and perused the award dated 11-04-1998 passed by the Arbitral Tribunal in A.T.C.No.34 of 1997.

5. There is absolutely no ambiguity in the award passed by the Arbitral Tribunal and there is a clear direction to first respondent Society to allot a suitable plot next available to petitioner's husband without reference to any draw. However, the same is not implemented. Hence, this Court is of the view that petitioner shall be provided with alternative plot as directed by the Arbitral Tribunal and accordingly a *mandamus* is hereby issued directing first respondent Society to allot an alternative plot to petitioner at the earliest without reference to any draw.

6. While the order is being dictated Sri M.P. Chandramouli, learned counsel for petitioner submits that if there are no plots available with the Society, no fruitful purpose would be served, even if a writ of mandamus is issued by this Court, because the Society would come forward and say that no plots are available. In such an eventuality, according to learned counsel for petitioner, petitioner may be permitted to give a representation to the Government to consider her case for allotment of an alternative plot. It is always open to petitioner to do anything as she likes and if she so chooses she may approach the Government for alternative plot and she is at liberty to do so. If a representation of this nature is given,
the Government is directed to consider the said representation and pass appropriate orders.

7. Accordingly, the writ petition is allowed. No costs.

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JUSTICE GOPALAKRISHNA TAMADA

Dt.19-06-2007
GLV